

ISSUE DATE: April 4, 2000

DOCKET NO. P-5825/NA-99-1359

ORDER GRANTING CONDITIONAL CERTIFICATE OF AUTHORITY CONTINGENT  
UPON RECEIPT AND APPROVAL OF CERTAIN ITEMS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayner

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request of First Link  
Communications Co. for a Conditional  
Certificate of Authority to Provide Local and  
Interexchange Facilities-Based and Resold  
Telecommunications Services in the State of  
Minnesota

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**PROCEDURAL HISTORY**

On September 21, 1999, First Link Communication Company (First Link or the Company) filed a petition for a conditional certificate of authority as a telecommunications carrier in Minnesota. First Link requested authority to provide: (1) interexchange telecommunications services throughout Minnesota; and (2) facilities-based and resold local service in the 507, 612 and 651 area codes. First Link filed a revised application on September 29, 1999.

On October 18, 1999, the Metropolitan 911 Board (911 Board) submitted comments requesting an opportunity to review First Link's 911 plan prior to Commission approval. The 911 Board also recommended that First Link be directed to complete plans and testing for its metro area 911 service before being allowed to establish customer service.

On November 5, 1999, the Minnesota Independent Coalition (MIC) filed a petition on behalf of its members located in First Link's proposed service areas. The MIC's petition recommended that the Commission deny First Link's application for the areas served by the MIC members. The MIC argued that First Link's application was premature with respect to the MIC members because First Link had not begun to negotiate interconnection agreements with any MIC members.<sup>1</sup>

On December 20, 1999, the Minnesota Department of Commerce (the Department) filed its initial comments recommending approval of First Link's application for a certificate of conditional authority contingent on the receipt and approval of six items, including the 911 Board's requests. On December 23, 1999, Mankato Citizens Telephone Company (MCTC) and Mid-

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<sup>1</sup> Minn. Rules, Part 7811.0200, Subp. 3.

Communications, Inc. (Mid-Com) filed comments stating that First Link's application was premature with respect to Mid-Com's 11 service areas. They also asserted and that the Commission should decide whether First Link should be required to serve MCTC's entire service area due to MCTC's status as a rural telephone company.

On January 10, 2000, the Department filed supplemental comments replying to MCTC's request that the Commission determine in this proceeding whether First Link should be required to serve MCTC's entire service area. The Department stated that it was not necessary for the Commission to decide that issue at this time. Further, the Department restated the six items it recommended be received and approved prior to granting First Link's request for a conditional certificate of authority, adding to one of the six items the additional requirement that First Link explain why its consumers would not experience the same kind of problems reported to the Better Business Bureau by customers of First Link's parent company, Prairie Lakes Internet, Inc.

Also on January 10, 2000, Frontier Communications of Minnesota, Inc. (Frontier) filed a Notice of Rural Status with the Commission. This document was assigned to a separate docket, P-5825, 405/M-00-27.

On February 4, 2000, First Link filed reply comments addressing each concern raised by commenting parties.

On February 17, 2000, First Link filed a letter arguing that, based on the current progress of interconnection negotiations, it was not necessary for the Commission to address Frontier's request for rural telephone company status.

The Commission met on March 21, 2000 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. SUMMARY**

In this Order, the Commission grants First Link's request for a conditional certificate of authority to provide facilities-based and resold local service in the 507, 612 and 651 area code exchanges of US WEST Communications, Inc. (USWC), GTE-Minnesota, Inc. (GTE), Frontier Communications, Inc. (Frontier), Sprint Communications, Inc. (Sprint), and Mankato Citizens Telephone Company (MCTC), contingent upon the receipt and approval of certain items detailed below. In reaching its decision on this request, the Commission

- rejects Mid-Com's objection to First Link receiving a certificate to operate in Mid-Com territory since First Link has clarified that it does not seek authority to operate in Mid-Com territory;
- finds it premature to determine whether First Link should be required to serve all of MCTC/Frontier's service territory; and
- exercises its discretion under Minn. Rule 7812.0300, Subp. 4 to impose

on First Link certain preconditions to the Company's conditional certificate of authority.

## **II. OBJECTION TO GRANTING FIRST LINK AUTHORITY FOR AREAS THAT IT DOES NOT PLAN TO SERVE**

In its application, First Link stated that it sought conditional authority to provide local service within the 612, 651 and 507 area.

The MIC objected on behalf of 34 of its small telephone company members who serve exchanges in First Link's proposed service area. The MIC objected that First Link's application was premature in requesting authority to provide service in the MIC members' exchanges because First Link had no plans as required by Minn. Stat. § 237.16 to serve those exchanges. MCTC and Mid-Com raised the same objection with respect to the eleven (11) exchanges served by Mid-Com.

In response, First Link argued that its request is not premature since it is merely seeking conditional authority. First Link clarified, however, that was not seeking authority to serve in territory served by the 34 MIC members or by Mid-Com. First Link stated that it sought conditional authority only for the 612, 651, and 507 calling areas served by US WEST Communications, Inc. (USWC), GTE - Minnesota, Inc. (GTE), Frontier, Sprint Communications, Inc. (Sprint), and MCTC.

Accordingly, the Commission will note the clarification and consider the issue resolved.

## **III. MCTC'S PROPOSED REQUIREMENT**

MCTC requested that the Commission exercise its discretion under Minn. Stat. §237.16, subd. 1(b) and affirmatively require First Link to serve all of MCTC's service area. MCTC noted that the Commission expressly reserved authority to impose such a requirement in its May 12, 1998 ORDER ADOPTING RULES in Docket P-999/R-97-608.<sup>2</sup>

MCTC stated that there is no indication that requiring First Link to serve MCTC's entire service area would unreasonably burden First Link and stated that there is no reason to allow First Link to discriminate between customers. MCTC asserted that its requested requirement was the only way to prevent the practice of "cherry picking" (cream-skimming) customers in low cost areas while failing to serve those in high cost areas.

The Commission notes that First Link has applied for authorization to serve the entire service area of both Frontier and MCTC and to date has indicated no intent to serve less than that entire area.

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<sup>2</sup> In that Order at page 2, the Commission noted that concerns about "cream-skimming" are better addressed on a case-by-case basis. The Commission stated: "Excluding the co-extensive service requirement from these rules does not preclude the Commission from imposing such a requirement as a condition of certification *where circumstances warrant it.*" (Emphasis added.)

Moreover, before attaining operational authority, First Link must receive Commission review and approval of its final tariffs. If, during that review, the Commission finds that First Link proposes to restrict its service offerings, the issue of whether this restriction should be allowed or rejected will be ripe for Commission determination.

In short, MCTC's concern is premature and need not be considered further at this time.

#### **IV. THE DEPARTMENT'S PROPOSED PRECONDITIONS**

The Department reviewed the filing requirements applicable to First Link's request to provide local service (facilities-based and resold) in the service territories of USWC, GTE, Frontier, and Sprint (Minn. Rules, Part 7812.0300) and MCTC (Minn. Rules, Part 7811.0300). The Department noted four places where First Link's filing was incomplete: items I, K, M, and O. The Department also noted that the rule prescribing the Commission's decision criteria (Minn. Rules, Part 7812.0300, Subp. 3, Item G) requires an applicant to have a toll-free number for receiving and responding to customer inquiries. The Department noted that First Link had not provided that number.

The Department acknowledged that First Link was applying for **conditional** authority only, but stated that in granting a conditional certificate of authority the Commission should not overlook failure to submit all the information required by the Commission's rules. The Department recommended that the Commission grant First Link a conditional certificate of authority only after the Commission receives and approves the following items.

1. A service area map that provides sufficient detail to clearly describe the service area for which the company seeks authority.<sup>3</sup>
2. A description of the policies, personnel, and equipment or arrangements for customer service and equipment maintenance, including information demonstrating the applicant's ability to respond to customer complaints and inquiries promptly and to perform maintenance necessary to ensure compliance with the quality requirements set forth in the Commission's rules and an explanation why consumers of its telephone services will not experience problems similar to those expressed by The Better Business Bureau with respect to its parent, Prairie Lakes Internet.<sup>4</sup>

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<sup>3</sup> Regarding the application for authority to serve territory served by MCTC, a company with fewer than 50,000 subscribers, see Item I of Minn. Rules, Part 7811.0300, Subp. 2. As to the application for local authority in territory served by the other incumbent telephone companies, see and Item I of Minn. Rules, Part 7812.0300, Subp. 2.

<sup>4</sup> Regarding the application for authority to serve territory served by MCTC, a company with fewer than 50,000 subscribers, see Item K of Minn. Rules, Part 7811.0300, Subp. 2. As to the application for local authority in territory served by the other incumbent telephone companies, see and Item K of Minn. Rules, Part 7812.0300, Subp. 2.

3. A description of the equipment and facilities First Link will use to provide service.<sup>5</sup>
4. Evidence that First Link has provided notice to both the city of Mankato and MCTC informing them that they have the opportunity to file comments in this matter. The notice should state that if either of these entities wishes to file comments, First Link agrees to waive any right it may have for the Commission to address its application for a period that shall not exceed 45 days.<sup>6</sup>
5. A statement that the company will have a toll free number available to all of its customers at the time it begins operations in Minnesota.<sup>7</sup>
6. A 911 Plan.<sup>8</sup>

## **V. COMMISSION ANALYSIS AND ACTION**

First Link has requested a conditional (non-operational) certificate of authority to provide local service. A conditional certificate does not authorize a company to operate (provide telecommunications service) but may be seen as a step along the road towards receiving final (operational) authority. In response to challenges from Mid-Com and MCTC, First Link itself has emphasized the provisional/preliminary (non-operational) nature of the authority it seeks at this time.

Minn. Rules, Part 7812.0300, Subp. 4 states that the Commission “may” give a telecommunications carrier a conditional certificate of authority. Hence, granting conditional authority before receiving and approving the company’s tariffs and interconnection agreements to provide local facilities-based service is discretionary with the Commission.

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<sup>5</sup> Regarding the application for authority to serve territory served by MCTC, a company with fewer than 50,000 subscribers, see Item M of Minn. Rules, Part 7811.0300, Subp. 2. As to the application for local authority in territory served by the other incumbent telephone companies, see Item M of Minn. Rules, Part 7812.0300.

<sup>6</sup> Regarding the application for authority to serve territory served by MCTC, a company with fewer than 50,000 subscribers, see Item O of Minn. Rules, Part 7811.0300, Subp. 2.

<sup>7</sup> Regarding the application for authority to serve territory served by MCTC, a company with fewer than 50,000 subscribers, see Item G of Minn. Rules, Part 7811.0300, Subp. 3. As to the application for local authority in territory served by the other incumbent telephone companies, see Item G of Minn. Rules, Part 7812.0300, Subp. 3.

<sup>8</sup> Minn. Rules, Part 7812.0500.

The Department noted several items that First Link did not provide in its application for conditional authority. More important, the Department recommended that the conditional authority be granted only **after** the Commission has received and approved the missing items. Furthermore, the Department did not say that once First Link provides the identified missing items it will automatically meet the standards for **final** authority.

Given the number of items absent from First Link's filing, the filing could be rejected as incomplete. Or, the Commission could specify the missing items and suspend action on the request until after receiving the missing items. In this case, the Commission chooses not to dismiss or to suspend. Instead, the Commission will grant First Link a conditional certificate of authority but emphasize that its grant is contingent upon receipt and approval of the six items listed by the Department and, further, contingent upon receipt and approval of First Link's final tariffs. In other words, First Link's conditional certificate of authority only becomes effective after the Commission has received and approved the specified items.

### **ORDER**

1. First Link will have a conditional (non-operational) certificate of authority to provide local and interexchange facilities-based and resold telecommunications services in the 507, 612, and 651 exchanges of USWC, GTE, Frontier, Sprint, and Mankato Citizens Telephone Company as soon as the Commission receives and approves the following items:
  - (1) A description of the equipment and facilities First Link will use to provide service;
  - (2) A service area map that provides sufficient detail to clearly describe the service area for which the company seeks authority;
  - (3) A description of the policies, personnel, and equipment or arrangements for a customer service and equipment maintenance, including information demonstrating the applicant's ability to respond to customer complaints and inquiries promptly and to perform maintenance necessary to ensure compliance with the quality requirements set forth in the Commission's rules. In addition, First Link should clearly explain why consumers of its telephone services will not experience problems similar to those expressed by The Better Business Bureau with respect to its parent, Prairie Lakes Internet;
  - (4) Evidence that First Link has provided notice to both the city of Mankato and MCTC that they have the opportunity to file comments in this matter. The notice should state that if either of these entities wishes to file comments, First Link agrees to waive any right it may have for the Commission to address its application for a period that shall not exceed 45 days;
  - (5) A statement that the company will have a toll free number available to all of its

customers at the time it begins operations in Minnesota;

- (6) A 911 Plan, including an opportunity for the 911 Board to review the company's plan and an opportunity for the 911 Board to work in conjunction with the company to complete plans and testing and prior to final Commission approval; and
- (7) Final tariffs.

- 2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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